

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-822

October 31, 1997

PUBLIC UTILITIES COMMISSION
Amendment to Private Fire
Protection Rule, Chapter 640

ORDER COMMENCING
RULEMAKING TO INCORPORATE
"METHOD A"

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. INTRODUCTION

By this Order, we initiate a rulemaking to amend Chapter 640 of the Commission's Rules, entitled "Private Fire Protection Service," originally implemented on June 21, 1979 and revised on May 1, 1995. The proposed rule, which is attached to this Order, amends the existing rule to incorporate "Method A," Demand Based Fire Protection Charges, developed by the Private Fire Protection Task Force and submitted to the Commission on January 10, 1996.¹ The Commission adopted this methodology by Order on March 26, 1996.² This rulemaking formally incorporates the methodology into Commission rules.

The amended rule has been drafted in accord with the Task Force members' desire that the methodology not apply immediately to all water utilities and to provide reasonable flexibility in its application.

II. BACKGROUND

On August 22, 1994, in Docket No. 94-285 the Commission first initiated a rulemaking for the purpose of amending its private fire protection rule. In addition to more specifically defining private fire protection services, the draft rule would have eliminated all system capacity costs from private fire protection rates. The impetus for the rulemaking was a large variation observed in the pricing of private fire protection across the state, and no apparent standard, methodology, or rationale to guide the setting of private fire protection charges. In addition, the Commission had received several

¹ New language is marked in bold and underlined.

² The Task Force Recommendation also proposed that "Method B," a methodology incorporating total structural fire flow demand, be further studied. The Commission is issuing an invitation to form a task force of stakeholders to further study Method B simultaneously herewith.

petitions and complaints from water utility customers concerning charges for private fire protection.

Representatives from water utilities, municipalities, fire departments and the State Fire Marshal's Office, businesses, and sprinkler associations presented oral statements at a public hearing and filed written comments on the draft rule. From the oral and written comments received, it became apparent that this issue involved very complex interrelationships between the interest of the utility, the customer, the municipality, public safety, and society in general.

The Commission adopted all non-controversial portions of the rule. The Commission did not, however, adopt the provision which would have prohibited water utilities from charging capital or maintenance costs for backup-capacity or facilities to private fire protection customers unless those facilities were added solely for the benefit of the private fire customer. Rather, the Commission adopted the recommendation of several commenters to establish a task force to look at these issues. On June 28, 1995, the Commission initiated a task force to develop recommendations for the resolution of the issues concerning the proper allocation of costs between public and private fire protection services. The task force, consisting of a number of the affected interest groups,³ met 11 times over a period of five months and submitted their recommendations, including Method "A," on January 10, 1996. The Commission adopted the task force recommendations in an Order in Docket No. 94-285 on March 26, 1996.

³ The task force was composed of representatives from several consumer owned utilities, one investor owned utility, the Public Advocate, the Maine Rural Water Association, the Maine Water Utilities Association, two fire protection engineers, the Municipal Association, two municipalities, the State Fire Marshal's Office, one fire department, the Maine Association of Fire Sprinkler Contractors, the Maine Merchants Association, and one business owner.

III. PROPOSED REVISIONS TO RULE 640

The proposed rule adds sections 1(E) and (F), Section 4, and Appendix A. These new sections set out the methodology contained in the Task Force's Method A by which water utilities may set charges for private fire protection services on the basis of flow demand requirements of the fire suppression system. The Commission may also require a water utility to set charges using Method A, if warranted.

The draft rule also clarifies how to implement Method A in situations where the utility has set its public fire protection revenues using a cost of service study, rather than the Chapter 69 curve, and establishes proxies where accurate fireflow demand information is not available for private fire protection installations or hydrants. The Commission invites comment on whether the rule should advise utilities to use the proxy values shown in Appendix A or in Appendix B,⁴ as well as on other aspects of the draft rule that have been developed by Commission staff to facilitate implementation of Method A.

IV. PROCEDURES

This rulemaking will be conducted according to the procedures established in 5 M.R.S.A. § 8051-8074.⁵ The attached rule may be adopted as proposed or in a revised or modified form. Pursuant to 5 M.R.S.A. § 8052, the Commission will hold a public hearing on the proposed rule if requested by five persons. Any written comments on the proposed amendment to this rule should be filed with:

Dennis Keschl
Administrative Director
Public Utilities Commission
242 State Street, State House Station #18

⁴ Appendix B was supplied by MWUA representative Norm Lamie, to serve as proxies for fire flow demand values when accurate information is not available. Mr. Lamie noted that, contrary to expectations of the task force that developed Method A, only limited records are available for private fire installations.

⁵ Provision for this rulemaking was made in the Commission's 1997-1998 Regulatory Agenda filed pursuant to 5 M.R.S.A. §§ 8053-A and 8060 on July 2, 1997. The entry for Chapter 640 of the Commission's rules appears on page 7 of the Regulatory Agenda.

Augusta, Maine 04333-0018

on or before December 5, 1997. Please refer to the docket number of this proceeding, Docket No. 97-822, when submitting comments or requests.

5 M.R.S.A. 8052(5-A) requires that, in adopting rules, state agencies must seek to reduce any economic burdens on small businesses. Section 8057-A(1)(C) requires a state agency to estimate the fiscal impact of the proposed rule. The fiscal impact of the proposed rule will include costs to water utilities of any of the reporting, ratesetting or policy issues contained in the proposed rule. The Commission does not anticipate that these costs will be significant, but invites comment from interested parties on what these costs are likely to be and who should bear them. Similarly, the Commission does not anticipate that the proposed rule will impose any economic burden on small business as that term is defined in 5 M.R.S.A. § 8052(5-A), which addresses reporting requirements and implementation schedules. The Commission invites comment on the extent to which the proposed rule would impose any economic burden on small business or any other implication of the proposed rule.

The following persons are being sent copies of this order and proposed rule:

- A. All water utilities in the State;
- B. The Maine Chamber and Business Alliance, the Maine Municipal Association, Maine Innkeepers Association, Maine Rural Water Association, National Fire Sprinkler Association, Maine Merchants Association and Maine Chapter of National Federation of Independent Business.
- C. All persons on the Commission's subscriber list who have requested notice of rulemakings;
- D. All persons who have expressed an interest in this rule and have requested notice of this rulemaking proceeding, including all parties and interested persons in Docket Nos. 92-091, 92-285, 94-285, and 97-005;
- E. The Bureau of Corporations, Elections and Commissions in the Office of the Secretary of State;
- F. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

G. The Executive Director of the Legislative Council (20 copies).

The Commission expects to conclude this rulemaking no later than March 1998.

Accordingly, we

O R D E R

1. That the Administrative Director send copies of the Order and proposed rule to all the persons listed in the body of this Order, and compile a service list of all such persons submitting written comments on the proposed rule.

Dated at Augusta, Maine, this 31st day of October, 1997.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt